

REMARKS

In the Official Action mailed on **10 January 2007**, the Examiner reviewed claims 1-36. Claims 1-3, 9, 10, 13-15, 21, 22, 25-27, 33 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schenkel et al. (USPN 6,046,988 hereinafter "Schenkel"), in view of Sachs et al. (USPN 6,906,320 hereinafter "Sachs"). Claims 6-8, 18-20, and 30-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schenkel, in view of Sachs, and further in view of Lam et al. (US Pub. No. 2005/0252884 hereinafter "Lam"). Claims 11, 12, 23, 24, 35 and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schenkel, in view of Sachs, and further in view of Kjeldsen et al. (US Pub No. 2003/0231714 hereinafter "Kjeldsen").

Rejections under 35 U.S.C. §103(a)

Claims 1, 13 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schenkel, in view of Sachs. Examiner states that it would have been obvious to one skilled in the art to combine the teachings of Schenkel and Sachs.

Applicant disagrees. The present invention relates to a "method and an apparatus that correlates and aligns signals for computer system performance parameters," (Instant application, paragraph [0001]). In contrast, Sachs relates to "mass spectrometry data analysis techniques that can be employed to selectively identify analytes differing in abundance between different sample sets," (Sachs, abstract). Applicant respectfully points out that the present invention and Sachs are nonanalogous art. 2141.01(a) of the Manual of Patent Examining Procedure (MPEP) states: to rely on a reference under 35 U.S.C. 103, it must be analogous prior art.

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue. "In order to rely on a reference as a basis for rejection of an applicant's

invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned."

Applicant contends that Sachs is not analogous art to the present invention. Furthermore, mass spectrometry requires the presence of a vacuum. In contrast, embodiments of the present invention would not function in a vacuum. Computer systems require a cooling medium, such as liquid or gas, to remove excess heat from various components of the computer system. Operating in vacuum would cause the system to overheat. Furthermore, mass spectrometry is potentially very expensive and impractical to use in an "always on" environment. By contrast, the present invention is used to monitor servers to eliminate downtime by actively operating the entire time the computer system is running. Thus, Applicant contends that Sachs teaches away from the present invention.

Applicant has amended the claims for clarity. Support for these amendments can be found in the abstract and paragraph [0036] of the instant application.

Furthermore, Applicant respectfully disagrees with Examiner about the obviousness of combining Sachs with Schenkel. Section 2143 (Basic Requirements of a Prima Facie Case of Obviousness) of the Manual of Patent Examining Procedure (MPEP) states that *there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings*. Applicant contends that there is no suggestion or motivation to combine the teachings of Sachs and Schenkel, especially since Applicant believes the Sachs and Schenkel are nonanalogous art.

Hence, Applicant respectfully submits that independent claims 1, 13 & 25 as presently amended are in condition for allowance. Applicant also submits that claims 2-12, which depend upon claim 1, claims 14-24, which depend upon claim 13, and claims 26-36, which depend upon claim 25, are for the same reasons in

condition for allowance and for reasons of the unique combinations recited in such claims.

CONCLUSION

It is submitted that the present application is presently in form for allowance. Such action is respectfully requested.

Respectfully submitted,

By



Shun Yao

Registration No. 59,242

Date: 10 April 2007

Shun Yao
PARK, VAUGHAN & FLEMING LLP
2820 Fifth Street
Davis, CA 95618-7759
Tel: (530) 759-1667
Fax: (530) 759-1665
Email: shun@parklegal.com